The only case which has been found on the point refused recovery against the sheriff on his official bond, holding that the publication was not an official act. *Bruns* v. *Clausmeier*, 154 Ind. 599. The actual ground of this decision seems questionable, and the court avoided the important issue as to whether there was any actionable libel. To such an action truth would be a possible defence, but could be proved only in a minority of cases. Absolute privilege should be denied, since it is recognized in the United States only in very exceptional cases, and in the present instance there appears to be no clear demand for such extraordinary protection. On the other hand, conditional privilege would seem appropriate, for an efficient control of criminals apparently requires, for one thing, that the sheriff send descriptions of those whom he suspects to other public officers having a corresponding duty and interest. *Harrison* v. *Bush*, 5 E. & B. 334. Conditional privilege may, however, be lost in four ways. First, by exceeding the reasonable necessities of the occasion, either in the matter collected or in the manner of its use. But this fails in the present instance, since only regulation data are sent and in a regular way. Secondly, if the defendant acted with any motive except the proper one of duty. Thirdly, if he did not honestly believe the plaintiff to be a suspicious character. In the two latter cases there would seem to be no reason or policy in protecting the sheriff from liability. Fourthly, according to some authorities, his privilege is lost if his belief is not reasonable as well as honest. *Carpenter* v. *Bailey*, 53 N. H. 590. England and one or two of the United States are *contra*, but the question has not often been adjudicated. *Clark* v. *Molyneux*, 3 Q. B. D. 237. Probably each jurisdiction will apply a uniform rule to all cases of conditional privilege. The present case then merges into the general inquiry, whether the defendant is sufficiently protected in the exercise of his functions, if he may without liability damage the plaintiff by a falsehood so long as he acts reasonably and honestly; or whether it is wiser that in matters frequently of nice estimate the defendant should be free to exercise his discretion, so long as he acts honestly and with proper motive, without the restraint necessarily imposed by liability according to an external standard. On the whole the latter view seems more expedient, particularly in the large class of cases where privilege rests on official duty. Accordingly the sheriff should be liable in an action for libel only where he has acted with improper motive or without honest belief in the truth of the publication.

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FRAUDULENT ALTERATION OF COMMERCIAL PAPER NEGLIGENTLY DRAWN. — Few legal questions touch the business world more closely than those relating to commercial paper. Negotiable instruments have come to be used almost as if they were money, and their safe and ready circulation, therefore, is a matter of great importance. Since they are exposed to the dangers of fraudulent alteration even more than the ordinary currency of the country, it becomes desirable that every legal precaution should be taken to preserve them intact. Whether the law should aid in this matter by holding liable one who through his negligence has facilitated the alteration of commercial paper and thereby caused an innocent party loss, is an interesting question. The English law on the point has recently been reviewed by Mr. G. H. A. Montgomery. *Fraudulent Alteration and the Effect of Negligence*, 2 Can. L. Rev. 632 (Sept. 1903).

In the opinion of the author the English decisions establish two principles. First, as between drawer and acceptor, the former owes a duty so to draw as not to facilitate alteration, and he must answer to the latter for any loss resulting from failure to observe that duty. Secondly, as between the drawer or acceptor and subsequent parties there is no such duty, and, consequently, no liability for a failure to observe it. The first of these conclusions rests on a decision handed down seventy-five years ago. *Young* v. *Grote*, 4 Bing. 253. The case has never been overruled, but it is difficult to say whether it would be followed on the facts to-day. Recent utterances of English judges point decidedly the other way.

See *Union Credit Bank* v. *Mersey Docks and Harbor Board*, 1899, 2 Q. B. 205, 211, 214. The author's second statement depends on the authority of one subsequent case, and is probably correct, although the liability involved was that of an acceptor only, not of a drawer. *Scholfield* v. *Londesborough*, [1896] A. C. 514. In America the decisions are generally confined to cases of notes, and the courts are not agreed whether a negligent maker is liable to an innocent holder for value after alteration. A respectable line of decisions imposes such liability. *Hackett* v. *First Nat'l Bank of Louisville*, 70 S. W. Rep. 664. Some courts have, however, reached an opposite conclusion. *Greenfield Savings Bank* v. *Stowell*, 123 Mass. 196.

Whatever be the result of the cases, it would seem on principle that there could be no valid distinction such as that which the English courts have tried to lay down. The drawer of a bill, subsequently raised, can be liable to the acceptor only because of negligence. And if he has been negligent, his liability ought to extend to any innocent subsequent party injured by that misconduct. The drawer knows the instrument is likely to come into the hands of a holder in due course, and he ought to answer for negligence which facilitates alteration and causes the holder loss. The reasoning, moreover, which holds a maker or drawer, ought equally to apply to an acceptor. The latter does not, it is true, determine the original form of the instrument. He may, however, refuse to accept a bill negligently drawn, or, if this would give rise to inconvenience, he may strike his pen through the blank spaces that suggest and encourage alteration. See EWART, ESTOPPEL, 47. By his acceptance he assumes a primary liability on the bill, and ought to use reasonable care in dealing with it. To this standard drawer, maker, and acceptor alike should be held. It certainly is no more than reasonable care for one primarily liable on an instrument to see that it passes into circulation so drawn as not easily to be altered.

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RES GESTAE. — This rather vague branch of the law forms the subject of a recent article by a well-known text-writer. *The Doctrine of Res Gestae in the Law of Evidence*, by Sidney L. Phipson, 19 L. Quart. Rev. 435 (Oct. 1903). In one important respect the author takes a position at variance with that of most of the authorities, and one which would seem to be erroneous. After examining the cases he decides that the *res gestae* principle does not properly cover the use of declarations as evidence of the truth of what they assert.

Mr. Phipson accurately divides the declarations, which are denominated *res gestae*, into two classes: (1) Those which *constitute* the transaction in issue, *e. g.* the words alleged as the basis of an action for slander; (2) Those which *accompany* and *explain* the transaction in issue. In the first class the declarations are of course not evidence at all, and so are not the subject of any doctrine of evidence. In the second class they are evidence, and as such may have value in one of two ways only: (a) as evidence of the facts they assert, *i. e.* testimonially; (b) as bases for inference as to the existence of other facts, independent of the truth or falsity of the declarations themselves, *i. e.* circumstantially. All relevant circumstances, including, of course, declarations, are admissible in evidence unless forbidden by some special rule of exclusion. Declarations falling under class (b) may, then, always go in, if only they shed light, either on the manner in which a transaction happened, or on the intention in the mind of an actor where that intention gives legal character to his otherwise equivocal act. And their admissibility does not depend on their being a part of and contemporaneous with the transaction which they explain. For example, on an indictment for homicide it is shown that a bystander shouted to the defendant that the deceased had a loaded pistol, the object being to prove, not that in fact the deceased did have the weapon, but that the defendant acted reasonably. It will hardly be contended that the same declaration would not be equally admissible for the purpose if made on the previous day. The doctrine of *res gestae*, then, is meaningless unless it applies to declarations under class (a), and Mr. Phip-